

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LEAGUE OF UNITED LATIN AMERICAN
CITIZENS (LULAC), et al.,

Plaintiffs,

v.

GREG ABBOTT, et al.,

Defendants.

Civil Action No. 3:21-cv-259
(DCG-JES-JVB)
(consolidated cases)

**UNITED STATES' REPLY MEMORANDUM IN SUPPORT OF MALC PLAINTIFFS'
MOTION FOR EXTENSION OF TIME TO COMPLETE DISCOVERY**

The United States files this reply memorandum to correct the record concerning the MALC Plaintiffs' Motion for Leave for Limited Discovery Out of Time, ECF No. 433.

On July 6, the United States wrote to counsel for Thomas Bryan and Eric Wienckowski to request dates on which they were available for depositions. Email from Daniel Freeman to Scott Field (July 6, 2022) (Ex. 1). In response, counsel for Bryan and Wienckowski wrote that depositions could not be scheduled until August. Email from Scott Field to Daniel Freeman (July 6, 2022) (Ex. 2). As a result, MALC Plaintiffs included Bryan and Wienckowski among individuals proposed to be deposed after the July 15, 2022 close of fact discovery. MALC Mot. at 2. Counsel for Mr. Bryan and Mr. Wienckowski then filed a response, clarifying that they had not "agreed" to be deposed in this matter but would continue to work with counsel for the United States to identify possible deposition dates. Bryan/Wienckowski Response, ECF No. 434. After further discussion, counsel for Bryan and Wienckowski sent a clarifying email to counsel for the United States, confirming that he did "not intend[]" to suggest that if DOJ does not serve a

subpoena during the current discovery period, we will object on that basis.” Email from Scott K. Field to Daniel Freeman (July 15, 2022) (Ex. 3); *see also id.* (“If the court grants additional time for discovery and if the court orders that depositions are permissible for Mr. Bryan and Mr. Wienckowski, then we will work with you to find mutually agreeable dates for those depositions.”).

Defendants now oppose MALC’s motion, in part based on an assertion that “Plaintiffs failed to seek” depositions of Bryan and Wienckowski “before the close of discovery, and likewise failed to serve a deposition subpoena before that date.” Defs. Opp. at 7, ECF No. 466. The premise of this opposition is untrue. Rather, the United States endeavored to avoid unnecessary motion practice by working with counsel for Bryan and Wienckowski to secure dates prior to issuing deposition subpoenas. *See* W.D. Tex. L.R. AT-4(a) (obligation to cooperate in scheduling depositions). Furthermore, counsel for the United States agreed to the request of counsel for Bryan and Wienckowski to wait until this Court resolves pending motions to enforce document subpoenas regarding these individuals before confirming that depositions should proceed. *See* June 6 Field Email, *supra*.¹

The United States respectfully requests that this Court grant MALC Plaintiffs’ Motion for Leave for Limited Discovery Out of Time with respect to Thomas Bryan and Eric Wienckowski.

¹ The United States timely served document subpoenas to Bryan and Wienckowski on May 3, 2022. After they declined to provide or log the requested materials, the United States filed actions to enforce those document subpoenas in the Eastern District of Virginia on June 14, 2022, and in the Southern District of New York on June 15, 2022. This Court subsequently consolidated those enforcement actions with this case. *See* Consolidation Order (Wienckowski), ECF No. 405; Consolidation Order (Bryan), ECF No. 406

Dated: July 26, 2022

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/s/ Daniel J. Freeman
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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2022, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system, which will send notification of this filing to counsel of record.

/s/ Daniel J. Freeman

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